

**Excerpt from the
ZONING BOARD OF ADJUSTMENT MEETING
Community Planning & Economic Development (CPED)**
250 South Fourth Street, Room 300
Minneapolis, MN 55415-1385
(612) 673-3153 Phone
(612) 673-2526 Fax

The following actions were taken by the Zoning Board of Adjustment on February 20, 2014.

Board Members: Sean Cahill, Matt Ditzler, John Finlayson, Eric Johannessen, Dan Ogiba, Matt Perry, Dick Sandberg, Jacob Sauflley, Ami Thompson

Board members absent: Ami Thompson

Committee Clerk: Fatima Porter 612.673.3153

ITEM SUMMARY

Description:

Item #1- 1100 and 1118 University Ave NE (BZZ# 6420, Ward 3) (Shanna Sether)

A. Variance: Tracey Kinney of Landform, on behalf of McDonald's USA, LLC, has applied for a variance to increase the number of freestanding signs from one to four at the property located 1100 and 1118 University Ave NE in the C2 Neighborhood Corridor Commercial District.

Action: The Board of Adjustment adopted staff findings and **approved** the variance to increase the number of freestanding signs from one to four for the properties located at 1100 and 1118 University Ave NE in the C2 Neighborhood Corridor Commercial District, subject to the following condition of approval:

1. Approval of the master sign plan by the Department of Community Planning and Economic Development.

Absent: Thompson

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Sauflley

Motion passed

B. Variance: Tracey Kinney of Landform, on behalf of McDonald's USA, LLC, has applied for a variance to increase the maximum area of freestanding signs from 80 square feet to 330 square feet at the property located 1100 and 1118 University Ave NE in the C2 Neighborhood Corridor Commercial District.

Action: The Board of Adjustment adopted staff findings and **approved** the variance to increase the maximum area of freestanding signs from 80 square feet to 330 square feet for the properties located at 1100 and 1118 University Ave NE in the C2 Neighborhood Corridor Commercial District, subject to the following condition of approval:

1. Approval of the master sign plan by the Department of Community Planning and Economic Development.

Absent: Thompson

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Saufley

Motion passed

C. Variance: Tracey Kinney of Landform, on behalf of McDonald's USA, LLC, has applied for a variance to increase the maximum height of a menu board from 6 feet to approximately 6 feet 9 inches at the property located 1100 and 1118 University Ave NE in the C2 Neighborhood Corridor Commercial District.

Action: Notwithstanding staff recommendation, the Board of Adjustment **denied** the variance to increase the maximum height of a menu board from 6 feet to approximately 6 feet 9 inches for the properties located at 1100 and 1118 University Ave NE in the C2 Neighborhood Corridor Commercial District, based on the following finding:

Finding #1: The increased height of the menu board to maintain consistency with the existing signage is not a unique circumstance of the property that creates practical difficulties in complying with the ordinance.

Absent: Thompson

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Saufley

Motion passed

D. Variance: Tracey Kinney of Landform, on behalf of McDonald's USA, LLC, has applied for a variance to increase the maximum to increase the maximum height of a freestanding sign from 8 feet to approximately 10 feet 9 inches at the property located 1100 and 1118 University Ave NE in the C2 Neighborhood Corridor Commercial District.

Action: The Board of Adjustment adopted staff findings and **approved** the variance to increase the maximum height of a freestanding signs from 8 feet to approximately 10 feet 3 inches and 10 feet 9 inches, for the properties located at 1100 and 1118 University Ave NE in the C2 Neighborhood Corridor Commercial District, subject to the following condition of approval:

1. Approval of the master sign plan by the Department of Community Planning and Economic Development.

Absent: Thompson

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Saufley

Motion passed

TRANSCRIPTION

Staff Sether presented the report.

Cahill: Ms. Sether, two brief questions. One, my understanding, for my own clarification, is strictly the variance is for the signage alone. So the increase for the two driveways is already going to be approved by the code no matter what. With that is, our findings are based

specifically on the effects of the signage itself, right? Part of this, I just saw some comments particular in some of the neighborhood outreach regarding traffic, litter and that kind of thing. While livability issues, I agree, are important, part of that is that really isn't going to come under our findings about the signage. Even if we wanted to limit that, it is my understanding is we can only do something regarding the variance content itself. So I can't limit a sign usage based on trash right?

Staff Sether: That is accurate. The Board of Adjustment may only tie a condition of approval if they believe there is a mitigating factor directly related to an impact due to the proposed signage.

Cahill: So everything we do, unfortunately, has to revolve around the signage period.

Staff Sether: That is correct.

Sandberg: In finding number three you mentioned that the signs would be internally illuminated and not backlit. Could you explain the difference please?

Staff Sether: I will do my best. It is very difficult to do without visuals. Essentially, internally illuminated allows for a light behind the source that allows for the letters to be projected and separate from the background. So it will either project images, logos or letters, more or less. Backlit signage is what you visualize for a large cabinet sign where the letters in the background are all illuminated. So in this case all of the proposed signage meets the definition for internally illuminated, an illumination type that is permitted in the C2 district.

Sandberg: So a backlit sign is like a big white board with black letters on it.

Staff Sether: That is one example.

Saufley: Ms. Sether to what extent can we make findings to the effect of the design of a sign. And I'm speaking specifically to the proposed canopies and thinking projection of noise and things of that nature.

Staff Sether: The projection being architecturally or the projection of noise?

Saufley: Whether or not a design of a sign will lead to the projection of sound waves across an area.

Staff Sether: The zoning ordinance and the environmental code handle noise in a separate location. So noise is handled outside of the sign allowance. Specifically, signs themselves don't actually make the noise. There is the...the word is going to escape me right now, <effective amplification-Saufley>, yes which is not integral, that portion is not signage. So the noise ordinance covers the speaker volume.

Chair Perry: There is a pole sign that exist already; it is going to be replaced with a pole sign?

Staff Sether: No, the existing pole sign will remain. However it is included in the existing sign calculations for quantity and area.

Chair Perry: Are there any other changes being made to that pole sign?

Staff Sether: No

Chair Perry: I'm curious about something. If there's an extra drive thru going through, and that seems like that is the basis for what is giving staff the inclination for support, to recommend support for these different variances, the property owner is adding the additional drive thru. Isn't that a circumstance then created by the applicant.

Staff Sether: Staff in this case found that the circumstances are unique to the property. One of the criteria was the size of the property and the location of the signage. Given that the signage, because it integrates color and logo, I believe most municipalities may not consider this to be signage, however Minneapolis has a very strict sign code. Therefore what has been identified as signage includes the order here and the drive thru. And then for the purposes of calculating maximum sign area, the menu boards were also included. And then, of course the existing pole sign.

Chair Perry: I see. That's why we're going from one to four. It's the three that you call menu boards?

Staff Sether: Correct.

Chair Perry: I'm just curious, are there any other, I know we're looking at this particular property but it seems like other McDonalds and other fast food places would be in a similar situation where they would require additional types of signage that under our sign code that you've described.

Staff Sether: You are exactly right. The Zoning Board of Adjustment approved the same variances for the location along Hiawatha Avenue last year. The City Planning Commission, two years ago, approved the same signage as requested on East Lake Street.

Chair Perry: I just wanted to make that point; I think I've made my point. I don't have any further questions. Did that prompt any questions by anybody? Thanks for your testimony. Is the applicant present? Would you like to give testimony? If you'd give your name and address for the record, I'd appreciate it.

Darren Lazan (105 5th Ave S #513): I'm with Landform Professional Services. We are the applicant on the item before you tonight but we represent McDonalds USA corporate entity on this project. First I'd like to thank staff; Ms. Sether did a tremendous job going through the very complicated process of reviewing these variance requests. This project goes back forty years, since its original approval, twenty years since a rebuild that added more approvals, was no easy task to go through. As she mentioned, this was the same process we

went through on Hiawatha and East Lake Street projects recently. This site is part of the now 2014 Major Rebuild Project, which is an ongoing process that McDonalds goes through to freshen their brand and update their sites. It was originally scheduled for 2013, MRP-Major Rebuild Program, but due to some budget restraints and some issues getting through that process it was differed to 14. We have amended PDR approval for the site plan you see before you. So the double drive thru, curb line, the change in a few of the parking stalls, the amendments to the ADA accessibility areas, those are all being brought to current code requirements. That's all part of this project and that was approved through an amended PDR process. Again, I won't waste anymore of your time; this is consistent with other sites. This is what you've seen in many other places this is the branding package that goes for the overhead clearance bar, the menu board, the cover for the menu board, so when your ordering and its raining, it's not raining on your open window. Minneapolis has a very thorough sign code and these now fall under signage, but if you look at the examples that staff put up there, we are pulling those in under the signing review and that is why it's before you tonight. No surprises here, you've seen them everywhere. It's the same exact package. Most of these are, as mentioned, internal to the site; they help with the directional flow, moving the cars through there. One of the items that the neighborhood had raised was traffic, some internal circulation issues; this goes to help solve those. We're also adding an island, separate from this request, but adding an island on the outboard side of the second drive thru that precludes folks from making the move that they are most concerned about which was an immediate southbound right turn into the sight a left and then a U-turn into the drive thru as it exist today. So that'll be kind of channeled back, you won't be able to make that move anymore you'll need to go all the way around, kind of an orderly fashion. Double drive thru, contrary to some opinion, is not double the drive thru traffic but rather lets us accommodate the existing drive thru traffic in a much more compressed area, keeps that stacking out of pedestrian areas where its hazardous for customers to travel through stacking cars. So it pulls them all up and queues them up in the drive thru area. So it's a very effective tool for managing the on-site circulation. We're hopeful starting this spring, so we're excited to be here tonight. We do have a Sheridan Neighborhood Association meeting scheduled for Monday. We had hoped to be on their agenda at the first part of the month, they could not make that work for us so we will be there this Monday night also with a McDonalds operations person present as well. With that I'll stand for any questions you may have or any comments.

Saufley: I'm curious how the choice of the height of your signage creates a practical difficulty that's unique to your use of the property.

Darren Lazan: It's a good question, it's a technical question related to your zoning components. The variances requested for height pertain to the need to have those clearance bars integrated into the signage. We need to have that pre-warning for vehicles before they turn the corner and collide with the canopy. So we need a clearance bar to set that and now that's above your ordinarily allowed amount of height. It's the character of the signage and the function as a overhead bar.

Saufley: I understand the overhead bar to some degree to protect the building structure, to prevent other damage. That only accounts for one of the signs, one of the variances your requesting for one sign, is that correct?

Darren Lazan: Correct.

Saufley: So the other three signs are all seeking excess height above and beyond the zoning allowances and you're seeking variances for height. Can you explain how there are practical difficulties complying with the zoning requirements in those other three situations?

Darren Lazan: The second, actually there are only two new conditions where this height is. It's the gateway, which is the clearance of the overhead bars we just described. And the second, is at the ordering station, on the menu board, there's a shield that comes up and over that protects the car from rain when you pull up to the microphones, it partially shields that. That again has to be high enough to protect vehicles that come through there, that's why that is higher than your signage ordinance would ordinarily allow.

Chair Perry opened the public hearing.

Chair Perry: Anyone else here to speak in favor of this application? I see no one, anyone here to speak against? You just step up, choose whatever order you want, if you could give your name and address for the record. Before you start, I would like to let you know that, as board member Cahill mentioned, we are not a board that deals with enforcement issues, so what I would ask all of you to do is to speak to the variances that we're dealing with, which are somewhat technical. And also, if someone has already made the point, that you would like to make before you do, simply say that you agree with the previous point so we can move things along fairly quickly. But I do want to make sure you get heard as well. And again your name and address sir.

Timothy Kennedy (1121 3rd St NE): I live right behind McDonalds. Actually, there is another height variance they are asking for, that's the menu board to go to six nine as opposed to six feet and that was in the request that he didn't address. The big McDonalds sign they pulled a permit to fix the pole, which was asked to be done by the City, and they haven't done it, two years ago. So I'm opposed to it. The height, I don't think anything has run into the building in the twenty years that they've built the new building. So I don't understand the need for all this, they're saying that that's the reason they want to do it to save the building and add the signage.

Chair Perry: Mr. Kennedy, just to make sure that we understand you, are you talking about the request from six feet to six nine?

Timothy Kennedy: Correct. He didn't say anything about that when you asked about the height, so I'm saying there's another variance, when he's asking about the height. He said it was the double drive thru and the canopies.

Chair Perry: And again, your opposition to that is?

Timothy Kennedy: Well, they're going to add the second drive thru; it sounds like that's a done deal. They want the signage so they can put the sign up there and go nine inches taller. I'm opposed to it.

Chair Perry: And you don't think it necessary?

Timothy Kennedy: No, I don't think so. I disagree with the whole process. I'm kind of upset. He got up here and he went on about other things and didn't address what he is doing. We get to find out that what we get to talk about is the signs. The main sign they pulled the permit, they haven't done the work. There not going to do the work, that's what she said, they didn't look at the work. So I'm kind of wondering what they are going to do. Other than update their whole building at the cost to us the neighbors.

Chair Perry: Sure. I'll mention this to everyone. We're all residence on this board as well. And we can appreciate that the City process sometimes is not a straight line and there are a lot of points into the process. There are other avenues within the City that can address some of these issues that you have, reading through some of the material and written testimony. I would encourage your first point of contact to be your City Council person to help guide you through that.

Timothy Kennedy: I just want to say one other thing about the other two McDonalds that they updated. They don't have residential property on the same block as them. We all live on the same block as this one.

Chair Perry: Thank you very much for your testimony Mr. Kennedy. Any questions, anyone else to speak against?

Robert Riskin (1117 3rd St NE): I live directly behind McDonalds. Several points, one is if you look at the height of the signs that they are requesting, coming in off the street, they want to raise them to ten feet. Those ten feet is two feet about the fence that they were required to build when they were given original permission to build on that corner. Because there was an agreement between the neighbors, the property owners and the City that such property if given approval to build would be in compliance with the neighborhood and the property owners for all kinds of light and views from the neighbor's properties. And with this ten foot high sign, the entrance, it would be above the fence level which is already an old fence that is going to need to be replaced, and they are responsible for taking care of that fence from the original agreement. That's point number one. Point number two, because of the height of the entrance, it's going to encourage larger vehicles coming in off these intersections, off of Broadway and off of University. And point number three of the variance request said that such a variance for this signage would not do harm to the neighborhood, or the environment or the safety of the citizens. There is an elementary school across the street from this property, such an increase in traffic would in fact have an impact on the safety and the environment and the well-being of the people who are on that very busy intersection already where semi-trucks come through and delivery trucks come through and stop at that McDonalds. They're going to take away parking spots by adding this additional signage and

drive thru. So while your only here to approve the signage it does have an inner correlated effect on all these other factors. And my question to you and to the City and to the Landform company is, so what kind of traffic studies have been done to determine that the increase in traffic that will likely occur as a result of having a second drive thru on that very busy corner would not have an adverse impact on the safety of the children from that school and the people that live there. And these signs, although they are visual, they also are auditory and we hear everything that goes on from those signs. And you cannot separate the visual from the auditory portion of these signs. And the noise that comes through there has a direct relationship on the amount of signage that McDonalds will have to attract more customers. And for this to be a separate issue, to me seems like an end run. McDonalds was originally approved by this neighborhood to be a good citizen and to take care of the neighborhood and it hasn't responded to any of our request, any of our complaints, and a.....

Chair Perry: Mr. Riskin, excuse me, I was following you for a while with your points as they related to these particular sign variances, and I'm losing track now. Whether McDonalds is a good neighbor or not....

Robert Riskin: Well the signage has a direct correlation to all these other factors because the signage is going to attract more traffic and safety.

Chair Perry: So your argument is that these variances of signs, which are additional signs and taller signs, is going to generate more traffic and therefore finding number three which talks about safety and congestion, you're saying is not found for because of that.

Robert Riskin: Correct. And it will have an adverse impact on the neighboring properties because the signage was originally approved so that it wouldn't be seen by the adjacent properties and now these additional entrance signs will be taller than the fence that's around McDonalds that separates the residential properties from commercial.

Chair Perry: What if they put up a fifteen foot height fence?

Robert Riskin: That's a possibility but that's not part of their proposal here. They're just proposing to add more traffic and more money to them, and because of adding more drive thru. And that's what the signage is all about. It has nothing to do with their building; the building is one of the most popular McDonalds in the city. And I don't believe that there have been any studies done on why it's necessary for them to add additional signage when it's already one of the most profitable McDonalds in town.

Chair Perry: That's not really the question before this board, is not why. The question is whether there are.....

Robert Riskin: Then let's go back to compliance with safety and health.

Chair Perry: I'm not going to get into a debate with you; I'm just trying to point out what our response.....

Robert Riskin: But there haven't been any studies on the safety issues then. For this department to say that it complies with safety and health for the neighborhood. I don't know of any studies that have been done and certainly we haven't been contacted as neighbors.

Chair Perry: Let's put that to rest; Ms. Sether can you speak to the traffic studies, thank you Mr. Riskin, if any and how they relate to these variances.

Staff Sether: The subject property was recently reviewed for the double drive thru as it relates to Preliminary Development Review (PDR). At PDR we have representation from planning and public works. Public works indicated there is no change in traffic because there are no additional entry points or exit points from the proposed site. I don't believe that we have any indication whatsoever that adding a second drive thru directly correlates to increased traffic. The traffic points have already been identified and found to be in compliance with public works standards to ensure that the safety of the public welfare, pedestrians, motorist, bicyclist, would not be altered with the additional drive thru. The traffic will occur within the property and therefore the public works piece; they don't have any additional review.

Chair Perry: And there is no pedestrian overlay in this area that would maybe bring some other factors in as it relates to this board's role and purpose.

Staff Sether: And specifically to signage.

Chair Perry: I think that address the question. You may not agree with the City's position on whether additional traffic will result or not. But the City's position as I just heard staff say is that they do not see that additional traffic would be generated by that. [interruption/question from a member of the audience], the question that was asked, since this is being recorded and not televised, was who to ask questions of regarding these land use applications, and I've directed the member of the public to speak to Ms. Sether who is the staff person assigned to this. Is there anybody else who would like to speak against this item? If you'd give your name and address for the record.

John Whalen (1115 3rd St NE): I was here in 1994 when the conditional permit was first issued and although you can say this doesn't directly, to the sign, I think there is something very disingenuous about looking at the good faith of McDonalds, because I would question that. If you look at the 1994 settlement there were two factors that were given conditionally for them to do the building the way they did it. These two factors were, one, a noise abatement factor, now their intending to, I would say, increase the noise by the double drive thru which is directly related to the signs, since the signs are what would provide for the double drive thru. Without the second sign, I don't think they will do the double drive thru.

Chair Perry: Mr. Whalen, the reason I asked staff, we don't usually have staff step in while the public is giving testimony; I wanted to put to rest the additional traffic. The City is contending that there is no additional traffic. Whether you agree with that or not....

John Whalen: I'm not talking about the additional traffic outside the property. I'm considered with the additional traffic inside the property. Because the whole issue that was brought up in 1994, and the reason they put the fence up from six feet to eight feet was because of the noise that would be created in that long strip. Now there will be two cars going down that strip if I understand how the drive thru works.

Chair Perry: How does that relate to the sign variances?

John Whalen: To me the signing variance is what permits that.

Chair Perry: Permits the additional?

John Whalen: The double traffic.

Chair Perry: The double traffic, so you couldn't have the double traffic without the additional signage.

John Whalen: The second part that I would like to question. McDonalds agreed to certain hours in that 1994, they have never kept that. They have been open 24 hours at times not to the certain given hours.

Chair Perry: And that again is not relating to the signs.

John Whalen: I'm relating this to the signs, in that I don't believe that you can, given the experience we have had with McDonalds that you can believe a word they say. So they are lying about the signs.

Chair Perry: It's on the public record that you have a lack of trust with McDonalds from past behaviors but it's not.....

John Whalen: The second thing <tape flip> undue hardship because of the conditions or circumstances unique to the property. I don't see any undue hardships that McDonalds has brought forth. And to be a variance cannot be given without undue hardships being implemented. That's what the law says. And I think it should be adhered to by the Board.

Chair Perry: Thanks for your comments. Would anyone else like to speak against this application?

Beth Forkenbrock (308 12th Ave NE): My property is to the north, it abuts McDonalds. The McDonalds fence separates my property from McDonalds. I would like to agree with the neighbors that have previously spoken. I would also like to state that one of the reasons I disapprove of the increased sign necessary for that second drive thru is the sound portion of it, the audio. When I'm in my backyard all summer long from spring to late fall I get to hear, "Welcome to McDonalds, may I take your order?" It's a livability issue, because now I will listen to two of them. Whether you want to agree or not there will be increased traffic, you don't want to address that I understand that, that is not part of your committee. But, that is a

factor and this increased sound that comes from the drive thru sign is definitely; if you can imagine being in your backyard and listening to this constantly for months for the year, it is definitely a huge frustration. In addition to that because of the traffic that comes through there and loud radios, you hear the boom, boom that comes from the radios, from the traffic that is coming through there. That's just the added feature of the drive thru. Without the signage without having the additional amplification necessary for the order takers, life would be better for the neighbors.

Chair Perry: Thank you. And you helped clear something up for me. So now I have another question of staff. I now understand what the neighbors are saying about the sound and what Mr. Saufley was bringing up at the beginning. The signs have these order taking things in them, they're speakers.

Staff Sether: They're not. The speakers are separate. The speakers are not integrated into the menu boards.

Chair Perry: So they could just be in a pole, just be in a box sitting next to... The signs are to provide, just to help me; there is something about sound with these speakers for taking and giving orders. The signs are not, that might be integrated or not, but that's irrespective, the signs themselves are to present menu information and directional way finding.

Staff Sether: You are accurate. The menu boards themselves do not have integrated speakers. They don't count against the total number of free standing signs that are included in the area. The order here, do not have the integrated speakers. And the canopy, directional signage does not have the speaker. None of the proposed free standing signs have any audio component.

Chair Perry: Ok, I have another question. And this is a little bit unorthodox to continue to bring staff in the mix, so I'm sorry I am interrupting the folks giving testimony. So, when Mr. Saufley asked this question in the beginning and I wasn't quite tracking where he was going with this, the sound and some of the residence brought this up as well, the sound has also been thought through and considered by City staff as well, the additional noise that might come, not from cars, but from these order taking speakers.

Staff Sether: The sound is regulated just as any other land use, by the noise ordinance.

Chair Perry: And that is a separate; that is addressed separately, not by us.

Staff Sether: Correct.

Chair Perry: So my advice at the beginning again was the best avenue to bring that up is to work through your City Council on that. This board doesn't have; if it was integrated into the sign there might be some, maybe, conditions we could put on. I don't want to be hypothetical here, that's not the case. Again I would encourage you to speak with your City Council person to address the noise issue that you are bringing up. So the next speakers please.

Pamela Lehan (1117 3rd St NE): I live right behind the fence. I just wanted to put on record that I agree with all of my neighbors. But I also wanted to ask just one question. I don't want to beat a dead horse, but so, if its only one microphone, you're going to leave one microphone and put up one more sign board and not another microphone with it. Correct? We are saying one has nothing to do with the other. If one has nothing to do with the other, put up the sign board and don't put up another microphone. I just wanted to put it out there and all of this information has been sent to our City councilman.

Chair Perry closed the public hearing.

Chair Perry: Before we get talking about board comments, I'd like to ask staff, can we put any conditions on the fence being upgraded and its height.

Staff Sether: Unfortunately, we can't include an increase in the fence height because that would trigger a new variance, because the fence height presently exceeds the maximum allowed based on the adjacency of residential.

Chair Perry: I just wanted to get that on the table as we're talking about these variances under consideration.

Staff Sether: If there are issues with the existing fence it's an enforcement issue, I would recommend that the public either contact 311 or come to the City to make a complaint. We do not have any recorded zoning complaints for the property.

Sandberg: I have a follow up question to Ms. Sether. Is the fence that is there now, was it subject to variance approval when it was built?

Staff Sether: It was not; instead it was a condition of approval placed through the conditional use permit. So even though it does not comply with the maximum fence height allowed, the additional variance was not granted.

Sandberg: But it does not comply with the existing height limitations, it exceeds that because of a condition put on use.

Staff Sether: It does exceed it; so the maximum fence height in a front yard is three feet. The maximum fence height in a side yard is four feet but may be increased to six and the maximum fence height in the rear yard is six. Therefore any portion of the fence that is over six feet, and it sounds like the whole thing is eight feet or greater, exceeds what is allowed by the zoning ordinance.

Chair Perry: Any other questions of staff while we have Ms. Sether up? Board comment on these four variances A, B, C and D?

Ditzler: I guess I would say I'm really glad that the neighbors came down to voice their opinions. It sounds like there are some long systemic issues with the residents that live near this property. It's also obvious that they would like their voices to be heard. I think,

personally for me as a board member, I think that there are, it sounds like from the neighbors that there are some enforcement issues. There are some other livability issues that go with this property. With what we are charged with and the back end that we have to lean on, unfortunately, in my mind, those don't lend a lot to these particular variances we that were looking at today. A lot of public works, and we rely on them a lot with their expertise and their engineers, I know I do when I make these decisions since I don't understand things like soil erosion and water retention, curb cuts, parking, utilities, things like that. So for me the opinion of public works carries a lot of weight because it's not an area that I deal with a lot. And I think that they have weighed in on this property, I know this property very well, I have driven by it many, many times, it is a difficult site and they've been there a long time. So, I am very sensitive to the neighbors' concerns and I hope that you get a forum to deal with those concerns, either through your council person or with McDonalds directly and your neighborhood organization. I really hope you get the chance to do that. Based to the information, the testimony that I heard that directly relates to these sign variances, I'm inclined to support staff on this. But I would really like to hear what everyone else has to say.

Sandberg: Of the comments I've heard, I think the height of the signs seems to be the thing that we could consider finding number three being not satisfied in that there was a fence built on this property in order to shield the neighborhood from effects of the use of this property. Part of that being light pollution from signs, not counting sound pollution because that's being handled separately, but to visually shield this property from the neighbors. To the extent that now we are approving a sign that is increasing the intrusion of the use of this property to the neighbors who were protected by that sign. I think there is an argument that finding number three may not be satisfied by some of the height variances.

Ditzler: I don't know the height of the bars that are used for the clearance. Does the City weigh in at all? I know that there are regulations and dimensions to make sure that the right cars and certain cars fit in and certain cars do not. Does the City weigh in at all? What I'm struggling with Mr. Sandberg's testimony is, does the City weigh in at all at what height those should be at, requirements? Anything like that, do they weigh in on that?

Staff Sether: We wouldn't unless it's considered to be a sign and that's the case here. For example, if they were to not integrate a logo or colors for the restaurant, it's no longer a sign, therefore it's permitted. The same thing goes for the order here canopy, it's because the colors and logo are there. And the sign ordinance is so specific about what signage is versus structure, art or mural, that these have been determined to be signs because of logo and color.

Ditzler: So the City does not weigh in on what height that is so that clearance is x, so that there's enough gap that these cars can come in or the building won't be damaged. That's all regulated by the property owner. So the City really doesn't weigh into that.

Staff Sether: I would say that perhaps the only place that it could be located, maybe, in the building code if required to identify clearance. But the only time zoning would weigh in on the maximum height of a clearance bar is if it is determined to be signage and we regulate as if it were any other free standing sign. And this is not what you would typically think of as a free standing sign.

Chair Perry: Is it a requirement to have a clearance bar like that or could you have these signs simply a monument sign rather than a clearance bar?

Staff Sether: As long as the monument sign is not determined to be a sign, again, it goes back to logo and color and branding.

Ditzler: My question was, what I'm struggling with is, if these seem to be some sort of safety consideration to make sure that the wrong size car does not do further damage to the property or whatever, in my mind I'm weigh if this is a legit safety utility that the City has or has not weighed in on based on an eight foot fence that was granted twenty years ago when this sort of safety precautions were not taken.

Staff Sether: The applicant may be able to correct me if I'm wrong but if I remember correctly at this location that there is a clearance sign on the canopy of the building. Is that accurate (to applicant)? The only location for something that exist with a clearance is on the structure itself, as you've already finished the drive thru ordering and you are turning into the drive thru itself to pay and to obtain your food. It is directly attached to the canopy and it's a directional sign, which is not regulated the same way as a free standing sign with logo color.

Ditzler: But to change whether or not we're going from a logo on a canopy to this, the City has nothing to do with it, it has to do with the particular property owner and their use.

Staff Sether: My understanding is that it's to protect the integrity of the structure with an oversized vehicle so it would be at the applicant's discretion.

Saufley: I wanted to echo my support for member Sandberg's comments regarding the height of the signs. I am a little bit perplexed about what to do with some of these, what I might consider, unnecessary request to increase the signage heights for menu boards and also the idea that you have a CUP (Conditional Use Permit) was granted in response to a sign height that is now being extended above, well anyway, I agree with board Sandberg's comments regarding the height, and of the gateway clearance sign and of the fence. I do have one question regarding the gateway sign, will those letters be illuminated? Is that part of the illumination?

Staff Sether: The drive thru are illuminated channel letters.

Cahill: I'm going to start with finding one and I'm going to go through each of these variances. I think one, whether or not we can increase free standing signs from one to four. Directly related to that is the maximum area of free signs. What this comes down to in the practical difficulty in my mind is this piece of property is located on a major intersection, it's busy. Broadway and University is a mess for a lot of traffic especially when people are going home, I understand. Part of that is regulation of the flow of traffic, in and out from there. Part of that is, I think, we are talking about the internal management of the flow of traffic on the property. Given its location and the business, I think that goes towards a practical difficulty. I think that meeting has been met. With regard to three and four, the maximum height of the free standing signs and the menu board. With regard to number three, the menu board, I don't

think there are any practical difficulties there. I just don't see it; it's a sign which is part of its advertisement. It has nothing to whether or not, you can comply with it. I don't see any practical difficulties in cutting off nine inches on a menu board. I don't think that's a problem. With regard to the freestanding sign, the eight feet to ten point nine inches, part of the practical difficulty is, as we've heard testimony, we have a lot of semi-trucks and oversized vehicles moving through the property just given its location. With that, I think, there's an interest in protecting that property, and the problem is if we don't do that there's a practical difficulty in protecting the property itself. With that, I think, there's practical difficulties with regard to the height of the freestanding signs the overhead clearance bars. So I would deny variance three right now on the practical difficulties. Turning to the other findings, with regard to whether or not it is detrimental to the community with regard to increasing the number of freestanding signs from one to four. I think this is an improvement. I think this about trying to move people through this property quickly and safely. With that is whether or not there are audio attached to it, whether or not there is a good faith effort by McDonalds really the question that comes to me is how is this property being used and how is the signage affecting that use? With that the signage to me meets a very sincere interest to meet safety concerns and to move people through the property. They don't have to be huge, that's why I think we can eliminate at least the menu boards, but I do think that this is meant to make for a safer operation of the property itself. With regards to the maximum area of free standing signs, most of the area is coming from this clearance bar. Again, I think this is about safety, this about protecting the property and property damage to drivers going through there. I think there's a reasonable use of it; I think that it is a common sense way of making sure that we don't have people just carting through there with whatever is available. Finally with regard to finding number four the freestanding height from eight feet to ten feet. This one, I'll be honest, I also have a tough time with this, because there's concern that there will be light pollution spilling over this ten foot fence. The flip side to this, is there any mitigation to it? We've already heard we can increase the fence size. This is one of those things; we have to have a balance. The tough part is if there is balance between light pollution and the fact there are residences nearby but it is a major intersection, lots of traffic, a lot of light pollution coming from other places in that area. I don't think that this is going to be a dramatic change in the use at all; I don't think it's going to be a dramatic change in how it's being used currently. As it stands, the practical difficulties and uses is still going to be a better improvement than the cost it's going to make to the neighborhood.

Chair Perry: Any other board members that have comments?

Cahill: Mr. Chair, I'd actually like to make a motion then. I'd recommend supporting staff findings and recommendations on variances one, two and four. I would move to deny variance three on the bases that there are no practical difficulties.

Chair Perry: Is there a second for that?

Saufley: Second.

Chair Perry: Mr. Saufley seconds that. Is there any further discussion on that motion? To be clear, we have to nomenclatures here. I've been referring to these variances as A, B, C and D

as listed on page one under concurrent review. And the motion is to adopt staff findings for A, B, and D, and deny variance C because there are not sufficient findings for practical difficulties. Is that correct?

Cahill: That's correct.

Chair Perry: Any further discussion? Will the clerk please call the roll?

Aye: Cahill, Ditzler, Finlayson, Johannessen, Ogiba, Sandberg, Saufley

Absent: Thompson

Abstain: Perry

Motion passed